

AUG 19 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

In re: ENTERPRISE INDUSTRIES, INC.,

Debtor,

SUTHERLAND PRESSES,

Appellant,

v.

FLEET CAPITAL CORPORATION,

Appellee.

No. 02-15758

BAP No. NC-01-01032-KMa

MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Perris, Klein and Marlar, Bankruptcy Judges, Presiding

Argued and Submitted June 11, 2003
San Francisco, California

Before: HILL,** T.G. NELSON, and HAWKINS, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable James C. Hill, Senior United States Circuit Judge for the
(continued...)

This appeal involves a security interest priority dispute in bankruptcy between Fleet Capital Corporation (Fleet), lender, and Sutherland Presses (Sutherland), vendor, concerning a 550-ton printing press purchased by the debtor, Enterprise Industries, Inc. (Enterprise). The parties are familiar with the facts which are not restated here.

The bankruptcy court, affirmed by the bankruptcy appellate panel (BAP), found that Fleet had acquired a purchase money security interest (PMSI) in the press by advancing funds that enabled Enterprise to acquire rights in the press within the meaning of Cal. Comm. Code ' 9107(b). It also found that Fleet's PMSI had priority over Sutherland's PMSI as Fleet was the first to file its UCC-1 statement. *See* Cal. Comm. Code ' 9312(5)(a).

We have thoroughly and independently reviewed the record, the briefs and the argument of counsel in this appeal. We find no error.

For the reasons stated by the bankruptcy court and the BAP, the judgment of the bankruptcy court, granting summary judgment in favor of Fleet, is

AFFIRMED.

^{**}(...continued)
Eleventh Circuit, sitting by designation.